

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 RICHARD HOROWITZ,

4 Plaintiff,

5 v.

18 CV 3312 (JMF)

6 HOWARD ZUCKER, et al.,

7 Defendants.

8 -----x  
9 New York, N.Y.  
May 3, 2018  
4:00 p.m.

10 Before:

11 HON. JESSE M. FURMAN,

12 District Judge

13 APPEARANCES

14 JACQUES G. SIMON

15 Attorney for Plaintiff

16 NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL

Attorneys for Defendants

17 BY: SOFYA UVAYDOV  
JAMES HERSHLER

18 ALSO PRESENT: HENRY WEINTRAUB  
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1 (Case called)

2 THE DEPUTY CLERK: Counsel, please state your name for  
3 the record.

4 MR. SIMON: Jacques Simon for Dr. Horowitz.

5 MS. UVAYDOV: Sofya Uvaydov from the New York State  
6 Attorney General's office for the defendant.

7 MR. HERSHLER: James Hershler, also of the Attorney  
8 General's Office.

9 MR. WEINTRAUB: Henry Weintraub. I'm here on behalf  
10 of the Department of Health, here for moral support.

11 THE COURT: Are you a lawyer?

12 MR. HERSHLER: Yes.

13 THE COURT: And admitted to the bar?

14 MR. HERSHLER: I was a long time ago. I don't know  
15 whether it's lapsed or not. I haven't appeared in federal  
16 court for several years. So I don't know whether it's  
17 considered active or not.

18 THE COURT: Well, on the theory that you're not going  
19 to do any speaking, I'll let you stay for there today. But if  
20 you attempt to appear in this case and sit at counsel table,  
21 you should make sure you're an active member of this Court's  
22 bar.

23 I received the defendants' letter of May 2 in response  
24 to the current application which is for an order to show cause.  
25 It raises a few arguments for why I should not sign the

1 proposed order to show cause, which is, number one, the  
2 plaintiff has not yet served defendants and, therefore, I lack  
3 personal jurisdiction over the defendants. Second, that the  
4 Younger extension doctrine applies; and third, that the  
5 plaintiff can't demonstrate a likelihood of success on the  
6 merits.

7 I assume the service issues have not changed since  
8 yesterday.

9 MR. SIMON: Correct, Judge. This was a short-notice  
10 order, and I did the best I could, which was on Thursday, I  
11 FedEx'd over to everybody the proposed order and everything  
12 else, and they maintain that the order to show cause has to be  
13 served in hand by process server.

14 Now, the summonses and everything else is a separate  
15 issue because I sent to them waivers. But I've done business  
16 with them before, and that hasn't been an issue. This is the  
17 first time when it is.

18 THE COURT: I don't know if the issue is the service  
19 of the order to show cause so much as it is the service of the  
20 summons and complaint which has to be done in accordance with  
21 the federal rules, and in the absence of proper service, there  
22 is a valid argument that I lack personal jurisdiction.

23 So I recognize it was a short timeframe that I gave in  
24 the order, but that's only because I got a motion for  
25 preliminary injunctive relief which is normally something that

1 should be acted upon relatively quickly, and I figured that was  
2 your intention.

3 MR. SIMON: If that is an issue, if service is an  
4 issue, I was wondering if I can get an extension to reservice  
5 it because I have to service the order to show cause in Albany  
6 because they're not accepting it here.

7 THE COURT: I think you don't need an extension of the  
8 deadline to serve the summons and complaint. You have 90 days  
9 under Rule 4(m), and that hasn't yet run. One possibility is  
10 that we should wait until you serve the summons and complaint,  
11 and then we can proceed from there.

12 On the other hand, everybody is here. For reasons  
13 that I'm happy to articulate, it may be that I can figure out  
14 what to do here. So let's put the service issues to the side  
15 for a moment, which is not to say that I don't treat the  
16 defendants' appearance here today as a waiver of their  
17 arguments on personal jurisdiction. Those are preserved, as  
18 far as I'm concerned.

19 The questions in my mind are whether we need to and  
20 should set a briefing schedule and, if so, what it should be,  
21 keeping in mind the potential service issues as well.

22 Let me just address the two of the other issues. One  
23 is the Younger extension argument. You can have a seat for a  
24 moment, Mr. Simon.

25 My problem with that argument is that -- correct me if

1 I'm wrong -- I don't think there are any proceedings currently  
2 pending in state court. I don't think that the doctrine  
3 extends to the possibility of proceedings being initiated.

4 I think it is basically a doctrine that says federal  
5 courts shouldn't interfere with ongoing proceedings, but where  
6 there are no ongoing proceedings -- they're just threatened --  
7 I don't think the doctrine applies.

8 Am I wrong?

9 MS. UVAYDOV: Your Honor, there are two distinctions.  
10 One is plaintiff is saying that the service of the subpoena  
11 itself is what he's challenge -- I apologize. Not the  
12 subpoena. The document request. That was in itself part of  
13 the state investigation, the OPMC's investigation following the  
14 complaint.

15 So he's trying to enjoin the Department of Health and  
16 the OPMC from ever continuing its investigation into the  
17 complaint or initiating any misconduct proceedings based on the  
18 letter.

19 THE COURT: The Younger extension doctrine is a  
20 doctrine that's rooted in essentially comedy for state court  
21 proceedings. I don't think it extends to a state court  
22 investigation. Does it?

23 MS. UVAYDOV: I believe we have cited cases that do  
24 say that the DOH's process of investigating complaints of  
25 misconduct does satisfy Younger.

1           Actually, we have cases, *Cameron v. Zucker* where it  
2           was the same thing, the investigation into a doctor's  
3           misconduct. The proceeding within the OPMC in the DOH, and the  
4           court did find that that was subject to Younger.

5           THE COURT: No. There was an actual hearing that was  
6           going to take place in that case, and the issue was whether the  
7           court could properly enjoin those proceedings. In other words,  
8           the proceedings had actually begun. So I don't think that that  
9           stands for the proposition that you're citing it for.

10          MS. UVAYDOV: Well, Your Honor, plaintiff is asking  
11          specifically for the DOH to be unable to continue to bring  
12          misconduct charges.

13          THE COURT: Right. I think if you had filed charges  
14          and there was some sort of hearing date, then the Younger  
15          extension probably would apply. But I think it probably  
16          doesn't apply at this stage.

17          Let me put that to the side for a moment and ask you a  
18          question, Mr. Simon, because the gravamen of your entire  
19          argument and complaint is that your client is entitled to a  
20          pre-compliance review before a neutral decision-maker. You  
21          cite the Supreme Court's decision in *city of Los Angeles v.*  
22          *Patel* in support of that argument.

23          Doesn't he have that here in the form of an Article 78  
24          proceeding?

25          MR. SIMON: No, Judge. As a matter of fact, there are

1 two issues here. We are challenging the statutory basis based  
2 upon which they are making the request because *Donovan*, which I  
3 cited, says clearly that these demands -- and they used to do  
4 that in 1993 in this state. These demands have to be made  
5 through a subpoena subject to a challenge before a judge.

6 When they don't do the subpoena -- and this is why  
7 they're bypassing everything. When they don't do the subpoena,  
8 they are not affording anybody pre-compliance proceedings.

9 So pretty much what they're saying is exactly what the  
10 Court of Appeals in *Morales* said they shouldn't be doing.  
11 Just because they have the authority to investigate, it doesn't  
12 mean that they shouldn't be do it by a subpoena that is subject  
13 to the Fourth Amendment requirements that is subject to the  
14 challenge before an impartial adjudicator. They no longer use  
15 the subpoena. They no longer tell you the relevancy of the  
16 requirements. They just say, just like *Patel*, give us medical  
17 records.

18 THE COURT: Except the difference is that the issue in  
19 *Patel* is that under the Municipal Code there, the police were  
20 entitled to essentially demand the hotel records, and if the  
21 hotel operator refused to comply, they were subject to "arrest  
22 on the spot," which is to really say that there was absolutely  
23 no opportunity for pre-compliance review.

24 Here you get a request under Section 230(10)(L), and  
25 you have 30 days in which to comply. But that also gives you

1 30 days to seek judicial review in the form of an Article 78  
2 proceeding. So it's a very different scheme.

3 I would think that if an Article 78 proceeding is  
4 available under state law, these are arguments that can be made  
5 in that context, and you are provided the due process that the  
6 Supreme Court says you're entitled to.

7 So what am I missing here? In particular, there is a  
8 case that I think defendants do cite in their letter, *Michaelis*  
9 *v. Graziano*, 5 NY3d 317, a 2005 Court of Appeals decision which  
10 says number one -- granted, it's under a different subsection  
11 of Section 230(10) but one would think that the reasoning would  
12 apply here as well, that there is no subpoena requirement that  
13 should be inferred in this statute and that reading that  
14 subsection to require a subpoena as opposed to a more informal  
15 request of the sort here would inhibit OPMC's ability to  
16 investigate authority that the legislature intended OPMC to  
17 have. I would think that that answers -- or at least goes a  
18 long way to answering -- your suggestion that a subpoena is  
19 required.

20 Secondly, in *Michaelis*, that arose in the context of  
21 an Article 78 proceeding. The recipient of the CMR -- I can't  
22 remember what a CMR stands for, but it's akin to the request  
23 here -- challenged the compliance with the CMR in an Article 78  
24 proceeding, and it went all the way up to the New York Court of  
25 Appeals.



1           Why is that not the due process that your client is  
2           entitled to?

3           MR. SIMON: Except that, Judge, here they're just  
4           bypassing that, and they're telling the physician pretty much,  
5           if you do not give us the medical records, we are going to  
6           punish you by subjecting you to medical discipline.

7           And that's exactly what *Patel* was. Okay. Over there  
8           they arrested them, and they dragged them out of the hotel.  
9           Over here they are subjecting them to disciplinary proceedings  
10          without the physician being able to challenge the action of  
11          the --

12          THE COURT: But that's nonresponsive, Mr. Simon. I'm  
13          saying that under the statutory scheme, Section 230, your  
14          client has 30 days in which to comply.

15          In that 30-day period, does he not have the right and  
16          ability to file an Article 78 proceeding seeking review and  
17          adjudication of whether he's to comply and whether the  
18          statutory scheme violates due process?

19          MR. SIMON: Not without a subpoena, Judge, says  
20          *Donovan*.

21          THE COURT: And you cite *Donovan* in your memorandum?

22          MR. SIMON: Yes.

23          THE COURT: Where is it? I have to say, Mr. Simon,  
24          going forward, you better comply with my rules and the local  
25          rules because I found it quite annoying that, number one, your

1 memorandum is longer than the local rules permit. Number two,  
2 it's not text searchable which my rules require. Number 3, it  
3 doesn't have a table of contents. Number 4, it doesn't have a  
4 table of authority. If you're telling me to look up a  
5 citation, it's very hard to do that, given your failure to  
6 comply with those rules. Going forward, make sure you don't do  
7 any of that.

8 Where is *Donovan* cited?

9 MR. SIMON: Page 23.

10 THE COURT: Bear with me. I'm trying to get the case  
11 but having some technical difficulties.

12 MR. SIMON: Your Honor, in pages 14 and 19, I'm  
13 discussing the necessity of having to issue a subpoena when  
14 they're requesting any type of records.

15 THE COURT: Can you draw my attention in *Donovan* to --

16 MR. SIMON: Yes. I'm working on it right now. It is  
17 at page 17.

18 THE COURT: Page 17 of your memorandum?

19 MR. SIMON: Page 17 of the memorandum and also -- it  
20 has to do with relevancy.

21 THE COURT: Again, I don't think you're answering my  
22 question which is why are these arguments that your client  
23 couldn't make in an Article 78 proceeding?

24 In other words, this is not like the scheme at issue  
25 in *Patel* where the operator is forced to comply on the spot and

1 failure to do so can result in his arrest. Your client has 30  
2 days in which to seek review of this before facing any sort of  
3 punishment or penalty even proceeding.

4 MR. SIMON: That's not what the statute says. It  
5 provides no review and the only review, says *Donovan*, that's  
6 provided is when a subpoena is issued. They do have a section  
7 pursuant to which a subpoena is issued, but they're not doing  
8 that.

9 THE COURT: But doesn't *Michaelis* -- *Michaelis* is an  
10 Article 78 proceeding.

11 MR. SIMON: *Michaelis* stands for a comprehensive  
12 medical review, Judge, which is different than what it is that  
13 they're trying here. A comprehensive medical review has to do  
14 with an administrative order that's issued by the director of  
15 the OPMC, and they come and review the entire practice which is  
16 completely different than a request for medical records.

17 THE COURT: But what is the basis to believe that that  
18 could be challenged in an Article 78 proceeding but the receipt  
19 and compliance with the request that your client received here  
20 cannot be?

21 MR. SIMON: There's an order -- in that case, there's  
22 an order that's being issued by the director of the OPMC that  
23 can be charged in an Article 78 proceeding. Here there is  
24 nothing.

25 THE COURT: Here there is a letter which says you have

1 to give us these records within 30 days, or that can give rise  
2 to a finding of misconduct.

3 So why is that not an order?

4 MR. SIMON: It's not an order. It's a request. It's  
5 not a subpoena, and it's not an administrative order. It's not  
6 an administrative action. It's a threat that they will subject  
7 him to discipline if he doesn't comply with their demand.

8 There is no administrative action that I can put under  
9 an Article 78. Article 78 speaks of an administrative action.  
10 72 is the prohibition which is officials acting in excess of  
11 their subject matter jurisdiction.

12 So when an order is issued by the OPMC for a  
13 comprehensive medical review, that is an administrative action,  
14 and whether or not that is in excess of their subject matter  
15 jurisdiction is something for the courts to review under  
16 Article 78.

17 It's not the same as a request for a certain medical  
18 records where they have to show relevancy and everything else  
19 which they are not showing in this letter. They used to say,  
20 we got a complaint, and this is what we are investigating.

21 Here they are depriving any physician from any  
22 opportunity to be compliant with judicial review because if you  
23 go to a judge with this letter, Judge, what is the relevancy?  
24 How does one prove the relevancy?

25 There is nothing to challenge. They're bypassing the

1 entire Fourth Amendment, and they have to show the relevancy,  
2 and it's got to be narrow. For example, Judge, if there is a  
3 428-page medical record and only 10 of those pages are  
4 responsive to what they are investigating, why are they  
5 entitled to the rest? *Morales* says so and everything else.

6 THE COURT: Again, you may be right on that score, but  
7 the question, for my purposes, is whether that's something that  
8 you can challenge under state law in an Article 78 proceeding.

9 So, defense counsel, can you speak to that.

10 MS. UVAYDOV: Yes, your Honor. Again, I think *Patel*  
11 goes to facial challenges of the statute and whether the scheme  
12 allows for pre-compliance review. Now, as your Honor points  
13 out, the statute, 230, has multiple avenues for the OPMC to  
14 investigate. It can be a subpoena under section K, it can be a  
15 CMR review if they issue it, or it can be this letter.

16 Now, if it's a subpoena, there's C.P.L.R. 2304 where  
17 he can bring a motion in Supreme Court. If it is this letter,  
18 there is an Article 78 proceeding.

19 Plaintiff is now saying, well, I can't challenge it.  
20 There is no indication that he tried to bring an Article 78 and  
21 he was told that he can't challenge it. He's making the  
22 supposition that he can't challenge it, but it is an  
23 administrative requirement. It's an administrative decision to  
24 ask him for these documents.

25 Now, if plaintiff came here and said, I brought an

1 Article 78 and it got dismissed because of some reason, because  
2 it wasn't sufficient grounds or it wasn't a final action or an  
3 order, that would be different. But there is no case law that  
4 says that he can't bring it as an Article 78. Other Article  
5 78s were permitted for similar investigative tools.

6 THE COURT: And your authority on that score is  
7 *Michaelis*?

8 MS. UVAYDOV: Yes.

9 THE COURT: Mr. Simon, what is your authority for the  
10 proposition that an Article 78 proceeding was not available to  
11 your client here?

12 MR. SIMON: I differentiated *Michaelis*, Judge, because  
13 that's the only thing that they brought in, and I cited  
14 *Donovan*, *See v. Seattle*, and *Patel*.

15 THE COURT: *Donovan* is a U.S. Supreme Court case. It  
16 doesn't speak to whether an Article 78 proceeding is a viable  
17 route for your client to challenge this under New York state  
18 law.

19 MR. SIMON: But I need something to challenge, Judge,  
20 if I don't have relevancy and I don't have anything that the  
21 subpoena provides.

22 THE COURT: I'm asking a procedural question. The  
23 question is whether under state law you have a means to  
24 challenge this. There is ample authority for the proposition  
25 that if you can bring an Article 78 proceeding before

1 compliance is required, that that satisfies the due process  
2 requirements, and then there is no due process problem.

3           So you can't cite a U.S. Supreme Court case for the  
4 proposition that there has to be relevancy for an investigative  
5 request. The question is where you can make that challenge.  
6 If you can make that challenge prior to compliance, then under  
7 state law you're likely to succeed on your due process  
8 challenge.

9           MR. SIMON: Judge, also we're challenging the  
10 statutory scheme altogether. At page 24 I cited Second Circuit  
11 cases saying that an Article 78 proceeding is not the proper  
12 vehicle to challenge the statutory scheme.

13           THE COURT: What's the grounds to get preliminary  
14 injunction on that basis? In other words, if you have the  
15 ability to challenge the application in this particular case in  
16 the form of an Article 78 proceeding, that's the route that  
17 your client should take, not seeking a preliminary injunction  
18 preventing the defendants from pursuing their investigation at  
19 all.

20           MR. SIMON: Judge, preliminary injunctions based upon  
21 unconstitutional statutory provisions are subject to federal  
22 court review.

23           THE COURT: Yes.

24           MR. SIMON: That's why I'm here, because I'm saying  
25 that 230(1), in conjunction with Education Law 6530(28), is

1 unconstitutional because it does not provide judicial review.

2 THE COURT: I think the predicate of that article is  
3 that you cannot bring an Article 78 proceeding under state law.  
4 So the question that I keep returning to -- and I don't think  
5 I've gotten an answer -- is what is your authority for the  
6 proposition that your client could not bring and challenge this  
7 letter in an Article 78 proceeding?

8 Because *Michaelis* certainly suggests to me that he  
9 could. *Michaelis* is similar. It's not a subpoena. It's a  
10 request. Granted it's under a different provision of Section  
11 230, but it too is not a subpoena.

12 What's your authority for the proposition that while  
13 an Article 78 proceeding was a viable route in *Michaelis*, it's  
14 not here?

15 MR. SIMON: *Michaelis*, again, involved an  
16 administrative order, Judge.

17 THE COURT: I understand.

18 What is your authority for the proposition that you  
19 could not bring an Article 78 proceeding with respect to the  
20 letter your client received in this case?

21 MR. SIMON: There is no case that says that I cannot  
22 bring an Article 78 proceeding. There is the statute that says  
23 that I can only bring an Article 78 proceeding if they either  
24 exceed -- under, one, if they exceed their powers on subject  
25 matter jurisdiction or if there is an administerial act



1 requiring them to do something, and under this letter, I don't  
2 have either.

3 THE COURT: Isn't the nature of your argument, that  
4 the defendants lack legal authority to make the request that  
5 they made in the form of the letter? Why is that not something  
6 that you could challenge in that form?

7 MR. SIMON: The nature of my argument is the manner in  
8 which they're doing it violates the Fourth Amendment.

9 THE COURT: Does anyone have anything to say at the  
10 back table?

11 MS. UVAYDOV: Yes. Your Honor, we keep going back and  
12 forth on whether an Article 78 is available. And the problem  
13 is that plaintiff brought this lawsuit and made this facial  
14 challenge before ever attempting to bring an Article 78.

15 Now, the reason why we have somebody from the DOH, in  
16 addition to assisting me with the understanding of how these  
17 things work, is we have spoken to the Department of Health, and  
18 they are willing to hold off on any kind of enforcement or  
19 misconduct while this issue gets clarified and there is a  
20 ruling on this.

21 So maybe the proposal would be to decline an order to  
22 sign the order to show cause right now and direct plaintiff to  
23 attempt to get an Article 78 or proceed by an Article 78.

24 THE COURT: If what you're telling me is that you're  
25 consenting not to take any action in connection with the

1 letter, then I think that that's effectively the relief that is  
2 being sought at this time and it moots the preliminary  
3 injunction altogether and we can just proceed in the normal  
4 course.

5 Am I missing something?

6 MS. UVAYDOV: No, because our position is still that  
7 it should not be an action in federal court; that these things  
8 should be actions in state court.

9 THE COURT: And then I think your remedy on that score  
10 is to file a motion to dismiss saying that on its face there is  
11 no claim here because he's entitled to due process under state  
12 law, namely, in the form of an Article 78 proceeding.

13 The question right now is not who's right about the  
14 ultimate litigation. It's what to do with the motion for  
15 preliminary injunction. If you're telling me that you're  
16 consenting to not take any action, then I think it moots the  
17 need for a preliminary injunction. Then we can proceed to the  
18 next course of the litigation.

19 MS. UVAYDOV: I don't know if my client would be  
20 willing to make that stipulation until the end of the  
21 litigation. So, if anything, I would like a few minutes to  
22 confer, because my understanding was he was willing to do it  
23 until this preliminary injunction issue was decided. Can we  
24 have a couple of minutes to confer with my client?

25 THE COURT: Sure. I'll stay on the bench in the

1 meantime.

2 (Counsel conferred)

3 MS. UVAYDOV: Thank you so much for the break.

4 THE COURT: Okay.

5 MS. UVAYDOV: So I have spoken with the DOH, and they  
6 are willing to agree to extend the time to respond to the  
7 letter until this case is decided in its entirety before trying  
8 to enforce the letter or bring any kind of charges.

9 THE COURT: All right.

10 MS. UVAYDOV: At the same time, I would like to  
11 reiterate that it might be the most efficient course of action  
12 to stay the current pending action instead of doing briefing on  
13 whether theoretically an Article 78 is available to plaintiff  
14 or not and actually have plaintiff go to state court to have  
15 them determine if an Article 78 is available.

16 THE COURT: Let me say the following, thinking a  
17 little bit out loud: I think in light of that representation,  
18 I would be inclined to deny the application for a preliminary  
19 injunction as moot based on the representation on the record  
20 that defendants will not take any action with respect to  
21 plaintiff with respect to his compliance or lack thereof with  
22 the letter at issue pending resolution of this case. In light  
23 of that, I don't see how a preliminary injunction would be  
24 appropriate.

25 If everybody is in agreement about that, I think we

1 can basically let the case proceed in the normal course. The  
2 next step would be proper service on the defendants. And then  
3 the defendants would have an opportunity to respond to the  
4 complaint, either by way of an answer, in which case we would  
5 reconvene and talk about a discovery schedule.

6 And I would anticipate and assume there might be the  
7 latter, namely, a motion, saying that under state law an  
8 Article 78 proceeding is available under state law and that  
9 that provides all of the process that the plaintiff is due, and  
10 in light of that, the case should be dismissed.

11 In either case, Mr. Simon, my recommendation to you  
12 would be to perhaps seek relief under Article 78. If it turns  
13 out that the state court won't entertain that application under  
14 Article 78, I think it would strengthen your argument here and  
15 you would be in a much better position and have some pretty  
16 good authority that an Article 78 proceeding is not an  
17 available form of pre-compliance review.

18 If the court does entertain your challenge under  
19 Article 78, then you will have gotten the relief that you're  
20 ultimately seeking I would think. So in either case, I would  
21 think that that might be the way you should go.

22 Am I missing something?

23 MR. SIMON: That's something right now definitely to  
24 think about after this conference, Judge. I will not burden  
25 the Court with more work than it already has. I'm going to be

1 looking at the case law very carefully, and I will be talking  
2 to the Attorney General. We're colleagues. We've been in the  
3 *Cameron* case together.

4 THE COURT: I saw that.

5 MR. SIMON: We know each other for a while. So I will  
6 be talking to them about how to proceed. I'm going to be  
7 thoroughly researching that avenue.

8 THE COURT: So does everybody agree with what I've  
9 sketched out as the way to proceed? Namely, I'll deny as moot  
10 the preliminary injunction request on the grounds that there is  
11 a representation on the record, and then we'll proceed in the  
12 normal course with service and whatever follows.

13 MR. SIMON: Yes.

14 MS. UVAYDOV: Yes, your Honor.

15 THE COURT: Great. That was a fruitful and helpful  
16 discussion. So depending on where things go, I may see you  
17 again. In the meantime, I would certainly encourage you to  
18 talk to one other and, A, figure out if there is a way of  
19 resolving this, and B, if there might be a more sensible forum,  
20 namely, an Article 78 proceeding.

21 If not, if the answer to both of those questions is  
22 no, then I presume I will see you again, either in person or in  
23 writing, and would urge to you make sure you follow the local  
24 rules and my rules with respect to any future submissions.  
25 Thank you very much. We are adjourned.

1 MR. HERSHLER: Your Honor, I just want to clarify one  
2 thing for the record. Henry Weintraub is not here as an  
3 attorney. He is here on behalf of the Health Department.

4 MR. WEINTRAUB: I'm here more as a party than as  
5 counsel, just for clarification purposes.

6 THE COURT: I appreciate that. In that case, you do  
7 not need to confirm that you're a member of the bar or enter a  
8 notice of appearance. I didn't realize that.

9 You said you were here for moral support. I thought  
10 that your colleague there was frightened of me and needed some  
11 assistance.

12 In that case, I welcome you and retract what I said  
13 before.

14 Thank you very much. We are adjourned.

15 (Adjourned)

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